

2018 SPECIAL SESSION BRIEF - JCA

September 11, 2018

SB 106: PURPOSE ACCOMPLISHED

- In 2016, the SD Legislature passed nationally important legislation via SB 106.
- SB 106 was deliberately written to challenge *Quill Corp v. North Dakota*, a U.S. Supreme Court decision which stated a business with no physical presence in a state is not required to collect sales tax.
 - Due to the evolution of e-commerce, physical presence nexus no longer works – in its place there is now an “economic or virtual” presence test.
- SB 106 was successful and on June 21, 2018, the U.S. Supreme Court ruled in favor of South Dakota.
 - This was a victory for the states – Congress previously tasked to address this but it has failed to act.
- SB 1 removes the injunction which is preventing South Dakota from implementing the law requiring remote seller to collect sales taxes.

SOUTH DAKOTA v. WAYFAIR OPINION

The U.S. Supreme Court noted three features about SD's law that are designed to prevent discrimination against or undue burden upon interstate commerce:

- **Small seller exemption**
- **No retroactive application**
- **Member of the Streamlined Sales & Use Tax Agreement**

Important to maintain these standards as South Dakota introduces and implements new e-commerce laws.

WHY BILL 1 NOW?

- **Gives enough time to communicate effectively to remote sellers and other stakeholders to ensure a smooth implementation.**
- **Permits South Dakota to implement our remote seller law as other states have done.**
- **Provides tax fairness between remote sellers and brick-and-mortar businesses.**

Publicly Announced Implementation Dates	Number of States
July 1, 2018	4
September 1, 2018	1
October 1, 2018	10
November 1, 2018	1
December 1, 2018	1
January 1, 2019	5

IMPLEMENTATION PLAN & EFFORTS

Out-of-State Businesses & In-State Businesses

- **Communication, Planning, On-boarding**
 - **Education – Customer Service**
 - **Dedicated Website with all Updates**
 - **Notification of Requirements to Remit**
 - **Smooth Registration Process**
 - **Ensure Compliance from the Beginning**
 - **Provide Links to other State Department of Revenue websites**
 - **Identify and Partner with Key Stakeholders**

SB 1

- **Section 1:** Explains the main purpose of SB 106 – allowing the State to sue remote sellers to challenge the physical presence rule – has been fulfilled.
- **Section 2:** Removes State's ability to sue remote seller under SB 106 – no longer necessary.
- **Section 3:** Removes the injunction against all remote sellers except the defendants in *South Dakota v. Wayfair* (Wayfair, Overstock, and Newegg).

SB 1

- **Section 4:** Provides an implementation date of November 1, 2018.
- **Section 5:** Clarifies how the injunction applies to the defendants in *South Dakota v. Wayfair*. When lawsuit ends, they will be required to remit from that date forward.
- **Section 6:** Emergency clause makes the bill effective upon signing by the Governor.

QUESTIONS?

NEXT EVOLUTION: MARKETPLACES

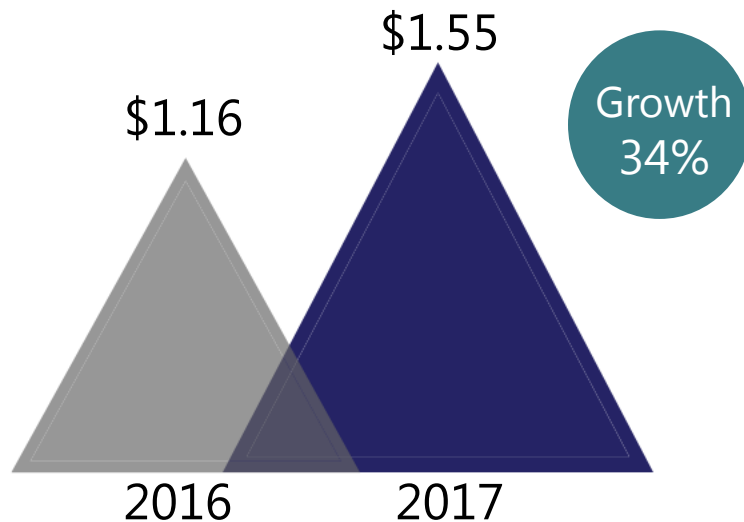
\$1.55 trillion

sold on the top 75 online marketplaces in the world in 2017



Marketplaces account for 50% of global online retail sales

GROWTH OF THE TOP 75 (Globally)
Gross merchandise value, in \$trillions



MARKETPLACES

97%

of U.S. consumers who shop online do so on marketplaces, up from 85% in 2016

Top reasons for shopping on a marketplace:

- ▶ Better prices
- ▶ Free or discounted shipping
- ▶ Broad product selection



U.S. MARKETPLACES

42

largest US
marketplaces

\$473 billion
sold collectively
in 2017

24%↑
from 2016

U.S. MARKETPLACES

by the numbers

The Amazon logo, featuring the word "amazon" in a bold, black, sans-serif font. A curved orange arrow is positioned below the letters "a" and "z", pointing from the "a" to the "z".

375 million products
2 million marketplace sellers
\$320 billion global sales

The eBay logo, featuring the word "ebay" in a lowercase, sans-serif font. Each letter is a different color: "e" is red, "b" is blue, "a" is yellow, and "y" is green.

1.1 billion products
25 million marketplace sellers
\$88 billion global sales

The Walmart.com logo, featuring the word "Walmart.com" in a blue, sans-serif font. The "W" is larger and more prominent than the rest of the text.

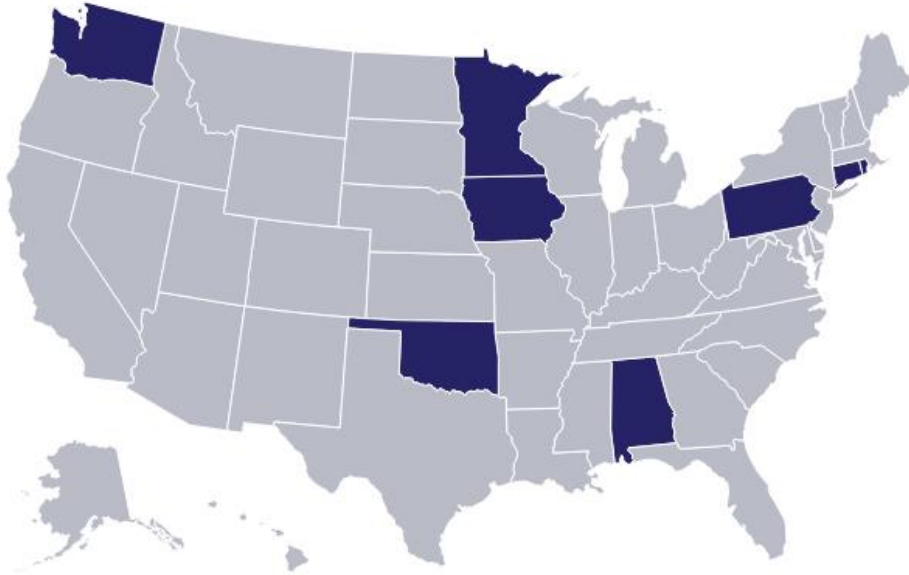
75 million products
15,000 marketplace sellers
\$30 billion global sales

The Houzz logo, featuring a green house icon to the left of the word "houzz" in a bold, black, sans-serif font.

10 million products
20,000 marketplace sellers
\$7 billion global sales

WHY SB 2 NOW?

MARKETPLACE LEGISLATION



To date, 8 states have passed legislation specific to marketplace nexus.

- **Gives marketplace providers appropriate time to prepare.**
- **Provides efficiency for small businesses in South Dakota and across the nation that utilize marketplace providers.**
- **Other states passing marketplace legislation have similarly delayed implementation dates.**

SB 2

- **Sections 1-4:** Define marketplace, marketplace provider, marketplace seller, retailers, and person.
- **Section 5:** Requires a marketplace provider that meets the thresholds to remit sales tax on all sales made through the marketplace provider's website.

SB 2

- **Section 6:** Establishes a 5-year hold harmless provision for marketplace providers due to inaccurate information from a marketplace seller.
- **Section 7:** Establishes the compliance date of March 1, 2019, for this bill.

QUESTIONS?